

## Senate Bill No. 771

### CHAPTER 695

An act to add Article 8 (commencing with Section 17590) to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to advertising.

[Approved by Governor October 10, 2001. Filed  
with Secretary of State October 10, 2001.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 771, Figueroa. Unsolicited and unwanted telephone solicitations.

Existing law prohibits certain unfair business practices, including certain advertising practices.

This bill would require the Attorney General, not later than January 1, 2003, to maintain a "do not call" list, containing the telephone numbers and ZIP Codes of residential or wireless telephone subscribers who do not wish to receive unsolicited and unwanted telephone calls from telephone solicitors. It would prohibit, subject to certain exceptions, a telephone solicitor from calling any telephone number, beginning on or after the 31st day after the then current "do not call" list becomes available, to, among other things, seek to offer a prize, to rent, sell, exchange, promote, gift, or lease any goods or services, to offer or solicit credit, to seek certain marketing information, or to seek to sell or promote any investment, insurance, or financial services. It would also prohibit persons who sell, lease, exchange, or rent telephone solicitation lists, except for directory assistance and telephone directories sold by telephone companies, from including in their lists telephone numbers that appear on the then current "do not call" list. Fees paid in connection with the "do not call list" by subscribers and solicitors would be deposited in the Special Telephone Solicitors Fund created by the bill.

Existing law makes it a crime to violate any of the provisions governing advertising. By adding these new prohibitions to those provisions, this bill would expand the scope of an existing crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Article 8 (commencing with Section 17590) is added to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, to read:

Article 8. Unsolicited and Unwanted Telephone Solicitations

17590. (a) There is a compelling state interest to protect the privacy of residential or wireless telephone subscribers who wish to avoid unsolicited and unwanted telephone solicitations. For the purposes of this article, a residential or wireless telephone subscriber shall be referred to as a subscriber.

(b) The act of becoming a subscriber should not undermine or lessen a person's right of privacy as guaranteed under Section 1 of Article I of the California Constitution.

17591. (a) The Attorney General shall not later than January 1, 2003, maintain a "do not call" list, updated no less frequently than quarterly, which shall set forth the California telephone numbers and ZIP Codes, but not the names or addresses, of subscribers, arranged by area code and numerical sequence, who do not wish to receive unsolicited and unwanted telephone calls from telephone solicitors as defined in Section 17592. The "do not call" list shall indicate any exclusions designated by the subscriber as provided in subdivision (b).

(b) Subscribers may place their telephone numbers and ZIP Codes on the "do not call" list in the manner prescribed by the Attorney General. The subscriber's placement on the "do not call" list shall expire three years after the date on which the subscriber's telephone number and ZIP Code first became available on the list to telephone solicitors. The Attorney General shall triennially charge these subscribers a fee not to exceed one dollar (\$1.00). A subscriber may exclude from the coverage of the "do not call" list telephone calls from entities identified by the subscriber. The subscriber shall designate any exclusions in the manner prescribed by the Attorney General.

(c) Telephone solicitors, as defined in Section 17592, shall obtain copies of the "do not call" list by paying a fee to the Attorney General in an amount not to exceed the costs incurred by the Attorney General in the preparation, maintenance, production, and distribution of that list. The Attorney General shall establish a sliding scale fee schedule, charging a telephone solicitor with more than 1,000 employees or independent contractors the maximum fee and charging a telephone solicitor with fewer than five full-time employees no fee. The Attorney General shall provide a telephone solicitor the option of paying this fee



on a quarterly or annual basis. The Attorney General shall offer a statewide list and shall also offer lists of areas within the state. The determination of the number and definition of areas shall be within the discretion of the Attorney General.

(d) The Attorney General shall utilize the best available, cost-effective technology to ensure that subscribers may easily place their telephone numbers on the “do not call” list. This technology includes, but is not limited to, methods by which a subscriber may effect placement on the list by using a state-designated Internet Web site or a designated, statewide toll-free telephone number. When the subscriber utilizes the toll-free telephone number method, the subscriber shall call from the telephone that is also the number to be included on the list. The Attorney General shall also utilize the best available, cost-effective technology to ensure that telephone solicitors may easily obtain and manipulate the “do not call” list. This technology may include, but is not limited to, methods that are computer compatible and that allow the downloading of the list and the sorting of the list by ZIP Code and that make the list available on CD-ROM. The Attorney General may contract with a private vendor to establish, maintain, and administer the “do not call” list and a contract entered into in that regard shall include appropriate provisions to protect the confidentiality of subscriber information. The Attorney General may promulgate regulations to implement the provisions of this article.

(e) It is the intent of the Legislature that the fees paid to the Attorney General by telephone solicitors and subscribers be utilized by the Attorney General in carrying out this article. The Attorney General shall annually reduce the amount of the fee paid by subscribers and telephone solicitors set forth in this section based on revenue history and costs so that the fees do not exceed the actual estimated costs in carrying out this article. The fees obtained by the Attorney General shall be deposited in the Special Telephone Solicitors Fund, which is hereby created. All moneys in the fund shall be subject to annual appropriation in the Budget Act.

(f) A person or entity that obtains a “do not call” list shall not use the list for any purpose other than to comply with this article. These unlawful purposes include, but are not limited to, causing a subscriber to participate in and be included on, the “do not call” list without the subscriber’s knowledge or consent, selling or leasing the “do not call” list to a person other than a telephone solicitor, selling or leasing by a telephone solicitor of the “do not call” list, and a telephone solicitor, either directly or indirectly, persuading a subscriber with whom it has an established business relationship to place his or her telephone number



on the “do not call” list, if the solicitation has the effect of preventing competitors from contacting that solicitor’s customers.

17592. (a) For purposes of this article, a “telephone solicitor” means any person or entity who, on his or her own behalf or through salespersons or agents, announcing devices, or otherwise, makes or causes a telephone call to be made to a California telephone number that does any of the following:

(1) Seeks to offer a prize or to rent, sell, exchange, promote, gift, or lease goods or services or documents that can be used to obtain goods or services.

(2) Offers or solicits or seeks to offer or solicit any extension of credit for personal, family, or household purposes.

(3) Seeks marketing information that will or may be used for the direct solicitation of a sale of goods or services to the subscriber.

(4) Seeks to sell or promote any investment, insurance, or financial services.

(5) Seeks to make any telephone solicitation or attempted telephone solicitation as described in Section 17511.1.

(b) A person or entity does not necessarily qualify as a telephone solicitor if the products or services of the person or entity are sold or marketed by an independent contractor whose business practices are not controlled by the person or entity.

(c) Except for telephone calls described in subdivision (e), beginning on the 31st day after the current “do not call” list becomes available, no telephone solicitor shall call any telephone number on the then current “do not call” list and do any of the following:

(1) Seek to offer a prize or to rent, sell, exchange, promote, gift, or lease goods or services or documents that can be used to obtain goods or services.

(2) Offer or solicit or seeks to offer or solicit any extension of credit for personal, family, or household purposes.

(3) Seek marketing information that will or may be used for the direct solicitation of a sale of goods or services to the subscriber.

(4) Seek to sell or promote any investment, insurance, or financial services.

(5) Seek to make any telephone solicitation or attempted telephone solicitation as described in Section 17511.1.

Between the time that a new “do not call” list becomes available and the 31st day thereafter when it becomes effective, telephone solicitors shall not call any telephone number on the previously available “do not call” list, if there was a list.

(d) No person or entity that sells, leases, exchanges, or rents telephone solicitation lists, except for directory assistance and telephone



directories sold by telephone companies or their affiliates, shall include in those lists those telephone numbers that appear on the current “do not call” list.

(e) Subdivision (c) shall not apply to any of the following:

(1) Telephone calls made in response to the express request of the subscriber called, if the request was made prior to the telephone call to the subscriber; an advertisement by the subscriber; or in response to the express, written or electronically written permission of the subscriber obtained pursuant to subdivision (f). “Express request” or “prior written permission” does not include any consent or permission included in any contract of adhesion. “Express request” may include a telephone call from a person or entity who has been provided the subscriber’s telephone number and name as a referral from a solicitor with which the subscriber has an established business relationship, if that solicitor has obtained the subscriber’s express request for the referral. A telephone call is presumed not to be made at the express request of a subscriber if one of the following occurs, as applicable:

(A) The call is made 30 business days after the last date on which the subscriber contacted a business with the purpose of inquiring about the potential purchase of goods or services.

(B) The call is made 30 business days after the last date on which the subscriber consented to be contacted.

(C) The call is made after the subscriber has requested that no further telephone calls be made to him or her.

(D) The call is made 30 business days after a product or service becomes available where the subscriber has made a request to the business for that product or service that is not then available, and requests a call when the product or service becomes available.

(2) Telephone calls made in connection with the collection of a debt or the offer by a creditor to the subscriber of an extension of credit to pay a delinquent obligation owed by the subscriber to that creditor.

(3) Telephone calls that the subscriber excluded from the coverage of the “do not call” list as provided in subdivision (b) of Section 17591.

(4) Telephone calls made to a subscriber if the telephone solicitor has an established business relationship with the subscriber. As used in this article, “established business relationship” means a relationship formed by a voluntary, two-way communication between a telephone solicitor and a subscriber with or without an exchange of consideration, on the basis of an application, purchase, rental, lease, or transaction if the relationship has not been terminated by the subscriber or the solicitor. This term also includes a relationship with a nonprofit entity formed through means such as previous donations to the nonprofit entity or participation in or attendance at, events held by the nonprofit entity. If



a subscriber purchases or obtains a product or service through a licensed agent or broker, for purposes of this article an established business relationship is created with the licensed agent or broker individually, apart from and in addition to, any established business relationship that may have been created by a licensed agent or broker acting on behalf of another, and the licensed agent or broker is a telephone solicitor, as defined in subdivision (a). Notwithstanding the provisions of this paragraph, an established business relationship does not exist between the subscriber and any separate legal entity associated with the telephone solicitor not acting as an agent or vendor on behalf of the telephone solicitor, as defined in subdivision (a), unless the separate legal entity shares the brand name of a business with which the subscriber has an otherwise established business relationship. If a separate legal entity with which a subscriber does not otherwise have an established business relationship telephones a subscriber on the basis that the entity shares the brand name, and the subscriber instructs the entity to place the subscriber on the entity's "do not call" list pursuant to Section 64.1200 of Title 47 of the Code of Federal Regulations and Part 310 of Title 16 of the Code of Federal Regulations, that instruction shall be binding on the entity with which the subscriber has the established business relationship, with the entity that has the shared brand name, and all other entities that share that brand name. Separate legal entities include, but are not limited to, any parent company or entity, any subsidiary company or entity, any partnership or copartner, any joint venture or venturer, association member, or comember, or any affiliated company or entity.

(5) Telephone calls made by an individual businessperson or a small business if the individual businessperson or small business employs no more than five full or part-time employees or independent contractors, the individual businessperson or a principal of the small business makes the telephone calls himself or herself for the sale of goods or services offered by that individual businessperson or small business, and the telephone calls are made to subscribers within a 50-mile radius of the location of the individual businessperson or small business. For purposes of this section, the services offered by the individual businessperson or small business cannot be telemarketing services. For purposes of this section, those independent contractors and employees with whom an individual businessperson or a small business is required to have a written independent contractor or employment agreement pursuant to a regulatory scheme to ensure regulatory accountability of those independent contractors or employees, are not counted against the total referenced above.



(6) A telephone call made solely to verify that a subscriber, and not an unauthorized third party, has terminated an established business relationship.

(7) Telephone calls made by a tax-exempt charitable organization.

(f) Nothing in this section prohibits a telephone solicitor from contacting by mail a subscriber whose telephone number appears on the “do not call” list to obtain the subscriber’s express written permission allowing the telephone solicitor to make the calls described in subdivision (c). In any dispute regarding whether a subscriber has provided this express written permission, the telephone solicitor has the burden of proving that the subscriber has provided this permission by producing the original or a facsimile document, signed by the subscriber, evidencing that permission.

17593. (a) The Attorney General, a district attorney, or a city attorney may bring a civil action in any court of competent jurisdiction against a telephone solicitor to enforce the article and to obtain any one or more of the following remedies:

(1) An order to enjoin the violation.

(2) A civil penalty of up to five hundred dollars (\$500) for the first violation and up to one thousand dollars (\$1,000) for a second and each subsequent violation. The civil penalties obtained shall be used to defray any administrative costs associated with the implementation of this article.

(3) Any other relief that the court deems proper.

(b) Any person who has received a telephone solicitation that is prohibited by Section 17592, or whose telephone number was used in violation of subdivision (f) of Section 17591, may bring a civil action in small claims court for an injunction or order to prevent further violations. If a person obtains an injunction or order under this subdivision and service of the injunction or order is properly effected, a person who thereafter receives further solicitations in violation of the injunction or order within 30 days after service of the initial injunction or order, may file a subsequent action in small claims court seeking enforcement of the injunction or order and a civil penalty to be awarded to the person in an amount up to one thousand dollars (\$1,000). For purposes of this subdivision, a person’s claims may not be aggregated to establish jurisdiction in a court other than small claims court. For purposes of this subdivision, a defendant is not required to personally appear, but may appear by affidavit or by written instrument.

(c) The rights, remedies, and penalties established by this article are in addition to the rights, remedies, or penalties established under other laws.



(d) It shall be an affirmative defense to any action brought under this article that the violation was accidental and in violation of the telephone solicitor's policies and procedures and telemarketer instruction and training.

17594. A "do not call" list prepared or maintained by the Attorney General and any information submitted to the Attorney General by a subscriber for use in preparing or maintaining that list shall not be disclosed pursuant to a request made under Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

17595. If a federal agency, pursuant to paragraph (3) of subsection (c) of Section 227 of Title 47 of the United States Code, establishes a single national data base of telephone numbers of subscribers who object to receiving telephone solicitations the department shall include the part of that single national data base that relates to California in the "do not call" list established by Section 17591.

SEC. 2. The provisions of this act are severable. If any provision of this article or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

